

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-110
Article 10
R9-22-1001
R9-22-1001
R9-22-1002
R9-22-1002
R9-22-1003
R9-22-1004
R9-22-1005
R9-22-1006
R9-22-1007
R9-22-1008
R9-22-1009

Rulemaking Action

Repeal
Amend
Repeal
New Section
Repeal
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-2903.01(F) and (K), and 36-2915(E)

Implementing statutes: A.R.S. §§ 36-2903(B)(10) and (F), 36-2903.01, 36-2915, and 36-2916

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4566, October 24, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: proposedrules@ahcccs.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules in 9 A.A.C. 22, Article 10 define the roles of various parties, including the Administration, providers, non-contracting providers, and members, in the first- and third-party liability and recovery process. The Administration proposes to modify first- and third-party related rule language to:

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- Implement changes approved by the Governor's Regulatory Review Council in the Administration's November 2002 Five-year Review Report;
- Remove contractor-related language and place it into contract; and
- Make changes to conform to the Arizona Secretary of State rulewriting guidelines.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Administration anticipates that there will be a nominal impact on the parties involved in the cost avoidance and recovery process. The Administration, providers, noncontracting providers, members, and PCG (the Administration's first- and third-party contractor) will benefit from the changes because the rules will be easier to use and better organized. In addition, AHCCCS contractors will benefit since "contractor-related language" will be removed from rule and placed in the contract between the Administration and a contractor.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115

Proposed rule language will be available on the AHCCCS web site (www.ahcccs.state.az.us) the week of November 10, 2003. Please send written comments to the above address by 5:00 p.m., January 9, 2004.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: January 9, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Video Conference Oral Proceeding

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004

Nature: Video Conference, Oral Proceeding

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section

R9-22-110. ~~First and Third Party Liability Related Definitions~~ Repealed

ARTICLE 10. ~~1ST~~ FIRST AND ~~3RD~~ THIRD PARTY LIABILITY AND RECOVERIES

Section

R9-22-1001. ~~First and Third Party Liability and Coordination of Benefits~~ Definitions

R9-22-1002. ~~First and Third Party Liability Monitoring and Compliance~~ General Provisions

R9-22-1003. Cost Avoidance

R9-22-1004. Member Participation

R9-22-1005. Collections

R9-22-1006. Administration Monitoring Responsibilities

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

R9-22-1008. Notification Information for Liens

R9-22-1009. Notification of Health Insurance Information

ARTICLE 1. DEFINITIONS

R9-22-110. ~~First and Third Party Liability Related Definitions~~ Repealed

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“1st party liability” means the resources available from any insurance or other coverage obtained directly or indirectly by a member that provides benefits directly to the member and is liable to pay all or part of the expenses for medical services incurred by the Administration, a contractor, or a member.

“3rd party” means a person, entity, or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“3rd party liability” means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.

ARTICLE 10. ~~1ST~~ FIRST AND ~~3RD~~ THIRD PARTY LIABILITY AND RECOVERIES

R9-22-1001. ~~First and Third Party Liability and Coordination of Benefits~~ Definitions

A. Definitions. In this Section, the following definitions apply:

1. “1st party liability” means the resources available from any insurance or other coverage obtained directly or indirectly by a member or eligible person that provides benefits directly to the member or eligible person and is liable to pay all or part of the expenses for medical services incurred by the Administration, a member, or eligible person.

2. “Cost avoidance” means avoiding payment of claims when 1st or 3rd party payment sources are available.

B. General provisions. The System shall be the payor of last resort, unless specifically prohibited by applicable state or federal law. The Administration may subcontract distinct administrative functions as permitted by A.R.S. §§ 36-2903(D) and 36-2915(B).

C. Cost avoidance. The System shall cost avoid all claims or services that are subject to 1st or 3rd party liability source, and may deny a service to a member or eligible person if it knows that a 1st or 3rd party will provide the service. The requirement to cost avoid applies to all AHCCCS-covered services, unless otherwise specified in this Section.

1. Responsible parties. The following parties shall take reasonable measures to identify legally liable 1st or 3rd party sources:

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- a. ~~Administration;~~
- b. ~~Contractor;~~
- e. ~~Provider;~~
- d. ~~Nonprovider;~~
- e. ~~Noncontracting provider;~~
- f. ~~Member; and~~
- g. ~~Eligible person.~~
- 2. ~~Coordination of benefits. If a contractor does not know whether a particular service is covered by a 1st and 3rd party insurer, and the service is medically necessary, the contractor shall contact the 1st and 3rd party, and determine whether the service is covered rather than requiring the member or eligible person to contact the 1st or 3rd party. If the contractor knows that the 1st and 3rd party insurer will neither pay for nor provide the covered service, and the service is medically necessary, the contractor shall neither deny the service nor require a written denial letter.~~
- 3. ~~Copayment, coinsurance, deductible. If a 1st or 3rd party insurer (other than Medicare) requires a member or eligible person to pay any copayment, coinsurance, or deductible, the contractor must decide whether it is more cost effective to provide the service:~~
 - a. ~~Within its network for continuity of care; or~~
 - b. ~~Outside its network for continuity of care under the following conditions:~~
 - i. ~~Advance payments. If an insurer requires payment in advance of a copayment, coinsurance, or deductible, the contractor shall make the payment in advance for the member or eligible person.~~
 - ii. ~~Limitation of copayment, coinsurance, and deductible amounts. A contractor that meets the requirements in subsection (C)(5) is not responsible for paying a copayment, coinsurance, or deductible that is in excess of what the contractor would have paid for the entire service, per a written contract with the provider performing the service, or the AHCCCS fee for service rate minus any amount paid by the 1st and 3rd party.~~
- 4. ~~Exceptions. A contractor shall provide the following services, and then coordinate payment with a 1st and 3rd party payor:~~
 - a. ~~Emergency service;~~
 - b. ~~Medically necessary transportation service. If a contractor approves a covered service out of the contractor's network, the contractor shall provide all medically necessary transportation, so 1st and 3rd party benefits can be received.~~
- 5. ~~Medically necessary service. A contractor shall ensure that its cost avoidance efforts do not prevent an eligible person or member from receiving a medically necessary service, and that the eligible person or member is not required to pay any copayment, coinsurance, or deductible for use of the other insurer's provider;~~
- 6. ~~Pre-natal and preventive services. The Administration may require a contractor to provide pre-natal and preventive pediatric services, and then coordinate payment with a liable 1st or 3rd party.~~
- D.** ~~Member or eligible person participation. A member or an eligible person shall cooperate in identifying potentially liable 1st or 3rd parties and assist the Administration, contractor, provider, nonprovider, or noncontracting provider in pursuing any 1st or 3rd party who may be liable to pay for covered services.~~
- E.** ~~Collections:~~
 - 1. ~~The following parties shall cooperate, identify, and notify the Administration of all potential sources of 1st or 3rd party liability:~~
 - a. ~~Provider;~~
 - b. ~~Nonprovider; and~~
 - e. ~~Noncontracting provider.~~
 - 2. ~~The following parties shall pursue collection or reimbursement from all potential sources of 1st or 3rd party liability:~~
 - a. ~~The Administration;~~
 - b. ~~Provider;~~
 - e. ~~Nonprovider; and~~
 - d. ~~Noncontracting provider.~~
 - 3. ~~Contractors shall cooperate, identify, and notify the Administration of all potential sources of 1st or 3rd party liability and pursue collection or reimbursement according to R9-22-1002(B).~~
 - 4. ~~Recoveries: Contractor. A contractor may retain up to 100% of its 1st and 3rd party collections if:~~
 - a. ~~Total payments received do not exceed the total amount of the contractor's financial liability for the member. Payments in excess of the contractor's liability shall be reimbursed as described in 42 CFR 433.154;~~
 - b. ~~AHCCCS fee for service, reinsurance benefits or both have not duplicated the recovery. Any duplicated benefits received shall be reimbursed to the Administration. Payments by the Administration for covered services may supplement payment or benefits from 1st or 3rd parties to the extent authorized by this Chapter or applicable contracts;~~
 - e. ~~The recovery is not prohibited by federal or state law; and~~
 - d. ~~The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to~~

reimburse the Administration up to 100% of collected 1st- and 3rd-party payments that are not reflected in reduced capitation rates.

5. Recoveries: Administration. The Administration may retain its 1st- and 3rd-party collections up to 100% of fee-for-service, reinsurance payments, administrative costs, capitation payments, Medicare Part A and B premium payments, and any other payments made by the System. The funds collected shall be deposited in the AHCCCS fund.

In addition to the definitions in A.R.S. § 36-2901 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article:

“Cost avoidance” means avoiding payment of claims when first or third-party payment sources are available.

“First-party liability” means the resources available from any insurance or other coverage obtained directly or indirectly by a member that provides benefits directly to the member and is liable to pay all or part of the expenses for medical services incurred by the Administration or a member.

“Third-party” means a person, entity, or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“Third-party liability” means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.

R9-22-1002. First- and Third-Party Liability Monitoring and Compliance General Provisions

- A.** ~~1st- or 3rd-party liability sources. The Administration shall monitor 1st- or 3rd-party liability payments to a contractor, provider, nonprovider, or noncontracting provider, which may include but are not limited to payments by or for:~~
 1. Private health insurance;
 2. Employment related disability and health insurance;
 3. Long-term care insurance;
 4. Other federal programs not excluded by statute;
 5. Court ordered or non-court ordered medical support from an absent parent;
 6. State worker’s compensation;
 7. Automobile insurance, including underinsured and uninsured motorists insurance;
 8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
 9. First party probate estate recovery;
 10. Adoption related payment; and
 11. Tortfeasor.
- B.** ~~Contractor responsibility. A contractor shall:~~
 1. Recover 1st- and 3rd-party payments from the sources identified in subsections (A)(1) through (A)(5); and
 2. Recover 1st- and 3rd-party payments from the sources identified in subsections (A)(6) through (A)(11), when directed by the Administration.
- C.** ~~Monitoring. The Administration shall determine whether a contractor, provider, nonprovider, or noncontracting provider is in compliance with the requirements in this Article by inspecting claim submissions and payment documentation for cost avoidance and recovery activities.~~
- D.** ~~Notification for perfection, recording, and assignment of AHCCCS liens:~~
 1. County requirements. The county of residence shall notify the Administration according to subsection (E) within 30 days after providing services according to A.R.S. § 11-291 of charges for hospital or medical services provided to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party, so the Administration may preserve its lien rights according to A.R.S. § 36-2915.
 2. Hospital requirements. Hospitals providing emergency or urgent medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration according to subsection (E) within 30 days after discharge. A hospital may satisfy the requirement of this subsection also by mailing to the Administration a copy of the lien it proposes to record or has recorded according to A.R.S. § 33-932 within 30 days after discharge.
 3. Contractor, provider, nonprovider, and noncontracting provider requirements. A contractor, provider, nonprovider, or noncontracting provider, other than a hospital, rendering medical services to a member or eligible person for an injury or condition resulting from circumstances reflecting the probable liability of a 1st or 3rd party shall notify the Administration according to subsection (E) within 30 days after providing the services.
- E.** ~~Notification information for liens. To satisfy notification requirements, all of the following information shall be mailed to the Administration:~~
 1. Name of the contractor, provider, nonprovider, or noncontracting provider;
 2. Address of the contractor, provider, nonprovider, or noncontracting provider;
 3. Name of member or eligible person;
 4. Member’s or eligible person’s Social Security number or AHCCCS identification number;
 5. Address of member or eligible person;
 6. Date of member’s or eligible person’s admission;

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7. Amount estimated to be due for care of member or eligible person;
 8. Date of member's or eligible person's discharge;
 9. Name of county in which injuries were sustained; and
 10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member, eligible person, or legal representative to be liable for damages.
- F.** Notification of health insurance information. A contractor, provider, nonprovider, or noncontracting provider shall provide notification of health insurance information to the Administration. To satisfy notification requirements, all of the following health insurance information shall be submitted to the Administration within 10 days of receipt of the health insurance information:
1. Name of member or eligible person;
 2. Member's or eligible person's Social Security number or AHCCCS identification number;
 3. Insurance carrier name;
 4. Insurance carrier address;
 5. Policy number;
 6. Policy begin and end dates; and
 7. Insured's name and Social Security number.

The Administration is the payor of last resort, unless specifically prohibited by applicable state or federal law.

R9-22-1003. Cost Avoidance

The Administration shall cost avoid all claims that are subject to a first- or third-party liability source, and shall deny a claim for a member if the Administration knows that a first or third party will pay the claim. The requirement to cost avoid applies to all AHCCCS-covered services, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify legally liable first- or third-party sources:

1. Administration,
2. Provider,
3. Noncontracting provider, and
4. Member.

R9-22-1004. Member Participation

A member shall cooperate in identifying potentially liable first or third parties and timely assist the Administration, contractor, provider, or noncontracting provider in pursuing any first or third party who may be liable to pay for covered services.

R9-22-1005. Collections

A. Parties that notify the Administration. The following parties shall cooperate, identify, and notify the Administration of all potential sources of first- or third-party liability:

1. Provider, and
2. Noncontracting provider.

B. Parties that pursue collection or reimbursement. The following parties shall pursue collection or reimbursement from all potential sources of first- or third-party liability:

1. The Administration,
2. Provider, and
3. Noncontracting provider.

R9-22-1006. Administration Monitoring Responsibilities

The Administration shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

1. Private health insurance;
2. Employment related disability and health insurance;
3. Long-term care insurance;
4. Other federal programs not excluded by statute;
5. Court ordered or non-court ordered medical support from an absent parent;
6. State worker's compensation;
7. Automobile insurance, including underinsured and uninsured motorists insurance;
8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
9. First-party probate estate recovery;
10. Adoption related payment; or
11. Tortfeasor.

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

- A.** County requirements. The member's county of residence shall notify the Administration under R9-22-1008 within 30 days after providing services under A.R.S. § 11-291 of charges for hospital or medical services provided to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party, so the Administration preserves its lien rights under A.R.S. § 36-2915.
- B.** Hospital requirements. Hospitals providing emergency or urgent medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party shall:
- 1.** Notify the Administration under R9-22-1008 within 30 days after discharge, or
 - 2.** Mail the Administration a copy of the lien it proposes to record or has recorded under A.R.S. § 33-932 within 30 days after discharge.
- C.** Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party shall notify the Administration under R9-22-1008 within 30 days after providing the services.

R9-22-1008. Notification Information for Liens

To satisfy notification requirements, a party in R9-22-1007 shall notify the Administration within the appropriate time-frame in R9-22-1007 by mail of the following information:

- 1.** Name of the provider or noncontracting provider;
- 2.** Address of the provider or noncontracting provider;
- 3.** Name of member;
- 4.** Member's Social Security number or AHCCCS identification number;
- 5.** Address of member;
- 6.** Date of member's admission;
- 7.** Amount estimated to be due for care of member;
- 8.** Date of member's discharge;
- 9.** Name of county in which injuries were sustained; and
- 10.** Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member or legal representative to be liable for damages.

R9-22-1009. Notification of Health Insurance Information

A provider or noncontracting provider shall notify the Administration by mail of the following health insurance information within 10 days of receipt of the health insurance information:

- 1.** Name of member,
- 2.** Member's Social Security number or AHCCCS identification number,
- 3.** Insurance carrier name,
- 4.** Insurance carrier address,
- 5.** Policy number or insurance holder's Social Security number,
- 6.** Policy begin and end dates, and
- 7.** Insurance holder's name.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

R9-28-109
Article 9
R9-28-901
R9-28-901
R9-28-902
R9-28-903
R9-28-904
R9-28-905
R9-28-906
R9-28-906
R9-28-907
R9-28-908
R9-28-909
R9-28-910
R9-28-911
R9-28-912

Rulemaking Action

Repeal
Amend
Repeal
New Section
Amend
New Section
New Section
New Section
Repeal
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 36-2932(M) and 36-2935

Implementing statutes: A.R.S. §§ 14-1201, 36-2932, 36-2935, 36-2946, and 36-2956

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4567, October 24, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: proposedrules@ahcccs.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules in 9 A.A.C. 28, Article 10 establish parameters for first- and third-party liability and coordination of benefits for the Arizona Long Term Care Services program. The Administration proposes to amend the rules with changes approved by the Governor's Regulatory Review Council on November 5, 2002 in a Five-year Review Report.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

Notices of Proposed Rulemaking

8. The preliminary summary of the economic, small business, and consumer impact:

The Administration anticipates that there will be a nominal impact on the parties involved in the cost avoidance and recovery process. The Administration, providers, noncontracting providers, members, and PCG (the Administration's first- and third-party contractor) will benefit from the changes because the rules will be better organized. In particular, the cost recovery process will be easier to understand, as will the use of undue hardship and factors that the Administration considers in determining partial recovery.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115

Proposed rule language will be available on the AHCCCS web site (www.ahcccs.state.az.us) the week of November 10, 2003. Please send written comments to the above address by 5:00 p.m., January 9, 2004.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: January 9, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Video Conference Oral Proceeding

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Video Conference, Oral Proceeding

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Section

R9-28-109. ~~First and Third-party Liability Related Definitions~~ Repealed

ARTICLE 9. ~~1ST- FIRST~~ AND ~~3RD- THIRD~~ PARTY LIABILITY AND RECOVERIES

Section

R9-28-901. ~~First and Third-Party Liability and Coordination of Benefits~~ Definitions

R9-28-902. ~~First and Third-Party Liability Monitoring and Compliance~~ General Provisions

R9-28-903. ~~Reserved~~ Cost Avoidance

R9-28-904. ~~Reserved~~ Member Participation

R9-28-905. ~~Reserved~~ Collections

R9-28-906. ~~Recoveries~~ Administration Monitoring Responsibilities

R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

R9-28-908. Notification Information for Liens

R9-28-909. Notification of Health Insurance Information

R9-28-910. Recoveries

R9-28-911. Undue Hardship

R9-28-912. Partial Recovery

ARTICLE 1. DEFINITIONS

R9-28-109. ~~First and Third-party Liability Related Definitions~~ Repealed

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Estate” has the meaning in A.R.S. § 14-1201.

ARTICLE 9. ~~1ST- FIRST~~ AND ~~3RD- THIRD~~ PARTY LIABILITY AND RECOVERIES

R9-28-901. ~~First and Third-Party Liability and Coordination of Benefits~~ Definitions

General Provisions. The provisions in A.A.C. R9-22-1001 apply to this Section. In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definition applies to this Article:

“Estate” has the meaning in A.R.S. § 14-1201.

R9-28-902. ~~First and Third-Party Liability Monitoring and Compliance~~ General Provisions

~~General provisions.~~ The provisions in A.A.C. R9-22-1002 apply to this Section.

R9-28-903. ~~Reserved~~ Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section.

R9-28-904. ~~Reserved~~ Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

R9-28-905. ~~Reserved~~ Collections

The provisions in A.A.C. R9-22-1005 apply to this Section.

R9-28-906. ~~Recoveries~~ Administration Monitoring Responsibilities

A. ~~The Administration may recover funds paid for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance, deductibles, fee-for-service, and any other payments made by the Administration for a member or eligible person from:~~

- ~~1. The estate of the member or eligible person who was 55 years of age or older when the member or eligible person received benefits; or~~
- ~~2. The estate or the property of the member or eligible person according to A.R.S. §§ 36-2935 and 36-2956 and 42 U.S.C. 1396(p), October 1, 1993, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

B. ~~The Administration may waive or compromise the recovery of funds when the recovery would cause an undue hardship to a surviving heir of the member or eligible person. In making the undue hardship decision, the Administration will consider the following:~~

- ~~1. When estate assets include real property or both real and personal property. There is property in the estate, and the property is listed as residential property by the Arizona Department of Revenue or County Assessor’s Office, and the heir;~~

Notices of Proposed Rulemaking

- a. Owns a business that is located at the residential property, and
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member or eligible person;
 - ii. The business provides more than 50% of the heir's livelihood; and
 - iii. The recovery of the property would result in the heir losing the heir's means of livelihood; or
- b. Currently resides in the residence, and
 - i. Resided there at the time of the member's or eligible person's death;
 - ii. Made the residence his or her primary residence for the 12 months immediately preceding the death of the member or eligible person; and
 - iii. Owns no other residence.
- 2. When the estate assets contain personal property only:
 - a. The heir's annual gross income for the household size is within 100% of the Federal Poverty Level (FPL). New sources of income (for example, employment, Social Security), which may not have yet been received, will be included in determining the household's annual gross income; and
 - b. The heir does not own a home, land, or other real property.
- C. If the heir's circumstances meet the conditions in subsections (B)(1) or (B)(2), the Administration shall determine on a case by case basis, to what extent, if any, the claim will be compromised or waived. Factors in making this determination include:
 - 1. Financial and medical hardship to the heir if a compromise or waiver is not granted;
 - 2. Income of the heir and whether the heir's household's gross annual income is within 100% of the FPL;
 - 3. Resources of the surviving heir;
 - 4. Value and type of assets in the estate (real and personal);
 - 5. Amount of the Administration's claim against the estate; and
 - 6. Whether other creditors have filed claims against the estate or have foreclosed on the property.
- D. A promissory note and deed of trust may be required in cases where a claim against property is compromised or waived, and the heir resides in the residence, maintains a business at the residence, or otherwise relies on the residence for support and means of livelihood. Within 30 days of receiving an undue hardship decision notice from the Administration, the executor of the estate or heir shall secure a promissory note and deed of trust, and provide certified copies to the Administration. The heir shall bear the costs for securing these documents.

The provisions in A.A.C. R9-22-1006 apply to this Section.

R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

The provisions in A.A.C. R9-22-1007 apply to this Section.

R9-28-908. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

R9-28-909. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

R9-28-910. Recoveries

The Administration shall recover funds paid for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by the Administration, fee-for-service, and reinsurance from:

- 1. The estate of the member who was 55 years of age or older when the member received benefits; or
- 2. The estate or the property of the member under A.R.S. §§ 36-2935 and 36-2956 and 42 U.S.C. 1396p.

R9-28-911. Undue Hardship

The Administration shall waive or compromise the recovery of funds when the recovery would cause an undue hardship to a surviving heir or devisee of the member. In making the undue hardship decision, the Administration shall consider the following:

- 1. When estate assets include real property or both real and personal property. There is property in the estate, and the property is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:
 - a. Owns a business that is located at the residential property, and
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member;
 - ii. The business provides more than 50% of the heir or devisee's livelihood; and
 - iii. The recovery of the property would result in the heir losing the heir or devisee's means of livelihood; or
 - b. Currently resides in the residence, and
 - i. Resided there at the time of the member's death;

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- ii. Made the residence his or her primary residence for the 12 months immediately preceding the death of the member; and
- iii. Owens no other residence.
2. When the estate assets contain personal property only.
 - a. The heir or devisee's annual gross income for the household size is less than 100% of the Federal Poverty Level (FPL). New sources of income (for example, employment, Social Security), which may not have yet been received, shall be included in determining the household's annual gross income; and
 - b. The heir or devisee does not own a home, land, or other real property.

R9-28-912. Partial Recovery

The Administration shall seek a partial recovery of funds on a case-by-case basis when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery. Factors in making this determination include:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir and whether the heir or devisee's household's gross annual income is less than 100% of the FPL;
3. Resources of the surviving heir or devisee;
4. Value and type of assets in the estate (real and personal);
5. Amount of the Administration's claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

PREAMBLE

1. Sections Affected

R9-31-110
R9-31-1001
R9-31-1001
R9-31-1002
R9-31-1002
R9-31-1003
R9-31-1004
R9-31-1005
R9-31-1006
R9-31-1007
R9-31-1008
R9-31-1009

Rulemaking Action

Repeal
Repeal
New Section
Repeal
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-2987(F)

Implementing statute: A.R.S. § 36-2987(F)

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4568, October 24, 2003

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: proposedrules@ahcccs.state.az.us

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules in 9 A.A.C. 31, Article 10 define the roles of various parties, including the Administration, providers, non-contracting providers, and members, in the first- and third-party liability and recovery process. The Administration proposes to modify first- and third-party related rule language to:

- Make rules easier to use by cross-referencing, when possible, first and third party-related rule language in 9 A.A.C. 22, Article 10. Requirements that are specific to the KidsCare program remain in the body of 9 A.A.C. 31, Article 10;
- Remove contractor-related language and place it into contract; and
- Make changes to conform to the Arizona Secretary of State rulewriting guidelines.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No studies were reviewed.

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Administration anticipates that there will be a nominal impact on the parties involved in the cost avoidance and recovery process. The Administration, providers, noncontracting providers, members, and PCG (the Administration's first- and third-party contractor) will benefit from the changes because the rules will be easier to use and better organized. In addition, KidsCare contractors will benefit since "contractor-related language" will be removed from rule and placed in the contract between the Administration and a contractor.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115

Proposed rule language will be available on the AHCCCS web site (www.ahcccs.state.az.us) the week of November 10, 2003. Please send written comments to the above address by 5:00 p.m., January 9, 2004.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: January 9, 2004
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Nature: Public Hearing

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
110 S. Church, Suite 1360
Tucson, AZ 85701
Nature: Video Conference Oral Proceeding

Notices of Proposed Rulemaking

Date: January 9, 2004
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Video Conference, Oral Proceeding

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 1. DEFINITIONS

Section

R9-31-110. ~~First- and Third-Party Liability and Recoveries Related Definitions~~ Repealed

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

Section

R9-31-1001. ~~First- and Third-Party Liability and Coordination of Benefits~~ Definitions

R9-31-1002. ~~First- and Third-Party Liability Monitoring and Compliance~~ General Provisions

R9-31-1003. Cost Avoidance

R9-31-1004. Member Participation

R9-31-1005. Collections

R9-31-1006. Administration Monitoring Responsibilities

R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI Liens

R9-31-1008. Notification Information for Liens

R9-31-1009. Notification of Health Insurance Information

ARTICLE 1. DEFINITIONS

R9-31-110. ~~First- and Third-Party Liability and Recoveries Related Definitions~~ Repealed

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning: "Cost avoidance" means avoiding payment of claims when first- or third-party payment sources are available.

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-31-1001. ~~First- and Third-Party Liability and Coordination of Benefits~~ Definitions

~~A.~~ General provisions:

1. ~~As specified in A.R.S. §§ 36-2986 and 36-2987, the Director has full operational authority to adopt rules or to use the appropriate rules adopted for coordination of benefits provided under this Article for any member.~~
2. ~~The Administration may subcontract distinct administrative functions as permitted by A.R.S. § 36-2986.~~
3. ~~KidsCare shall be the payor of last resort as specified in A.R.S. § 36-2903.~~

~~B.~~ Cost avoidance. The System shall cost avoid all claims or services that are subject to first- or third-party liability source, and may deny a service to a member if it knows that a first- or third-party will provide the service. The requirement to cost avoid applies to all Title XXI covered services, unless otherwise specified in this Section.

1. ~~Responsible parties. The following parties shall take reasonable measures to identify legally liable first- or third-party sources:~~
 - a. ~~Administration;~~
 - b. ~~Contractor;~~
 - c. ~~Provider;~~
 - d. ~~Nonprovider;~~
 - e. ~~Noncontracting provider, and~~

Notices of Proposed Rulemaking

- f. Member.
- 2. Coordination of benefits. As specified in A.R.S. § 36-2986, if a contractor does not know whether a particular service is covered by a first and third party insurer, and the service is medically necessary, the contractor shall contact the first and third party, and determine whether the service is covered rather than requiring a member to contact the first or third party. If the contractor knows that the first and third party insurer will neither pay for nor provide the covered service, and the service is medically necessary, the contractor shall neither deny the service nor require a written denial letter.
- 3. Copayment, coinsurance, deductible. If a first or third party insurer (other than Medicare) requires a member to pay any copayment, coinsurance, or deductible, the contractor must decide whether it is more cost effective to provide the service:
 - a. Within its network for continuity of care, or
 - b. Outside its network for continuity of care under the following conditions:
 - i. Advance payments. If an insurer requires payment in advance of a copayment, coinsurance, or deductible, the contractor shall make the payment in advance for the member.
 - ii. Limitation of copayment, coinsurance, and deductible amounts. A contractor that meets the requirements in subsection (B)(5) is not responsible for paying a copayment, coinsurance, or deductible that is in excess of what the contractor would have paid for the entire service, per a written contract with the provider performing the service minus any amount paid by the first and third party.
- 4. Exceptions. A contractor shall provide the following services, and then coordinate payment with a first and third party payor:
 - a. Emergency service, and
 - b. Emergency transportation as specified in A.R.S. § 36-2989.
- 5. Medically necessary service. A contractor shall ensure that its cost avoidance efforts do not prevent a member from receiving a medically necessary service, and that a member is not required to pay any copayment, coinsurance, or deductible for use of the other insurer's provider;
- 6. Pre-natal and preventive services. The Administration may require a contractor to provide pre-natal and preventive pediatric services, and then coordinate payment with a liable first or third party.
- C. Member participation. A member shall cooperate in identifying potentially liable first or third parties and assist the Administration, contractor, provider, nonprovider, or nonecontracting provider in pursuing any first or third party who may be liable to pay for covered services.
- D. Collections:
 - 1. The following parties shall cooperate, identify, and notify the Administration of all potential sources of first or third party liability:
 - a. Provider;
 - b. Nonprovider, and
 - c. Nonecontracting provider.
 - 2. The following parties shall pursue collection or reimbursement from all potential sources of first or third party liability:
 - a. The Administration;
 - b. Provider;
 - c. Nonprovider, and
 - d. Nonecontracting provider.
 - 3. Contractors shall cooperate, identify, and notify the Administration of all potential sources of first or third party liability and pursue collection or reimbursement according to R9-31-1002(B).
 - 4. Recoveries: Contractor. A contractor may retain up to 100% of its first and third party collections if:
 - a. Total payments received do not exceed the total amount of the contractor's financial liability for the member. Payments in excess of the contractor's liability shall be reimbursed as described in 42 CFR 433.154, May 12, 1980, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;
 - b. Title XXI reinsurance benefits or both have not duplicated the recovery. Any duplicated benefits received shall be reimbursed to the Administration. Payments by the Administration for covered services may supplement payment or benefits from first or third parties to the extent authorized by this Chapter or applicable contracts;
 - c. The recovery is not prohibited by federal or state law, and
 - d. The payments collected are reflected in reduced capitation rates. The Administration may require a contractor to reimburse the Administration up to 100% of collected first and third party payments that are not reflected in reduced capitation rates.
 - 5. Recoveries: Administration. The Administration may retain its first and third party collections, reinsurance payments, administrative costs, capitation payments, and any other payments made by the System. The funds collected shall be deposited in the Children's Health Insurance Program Fund as specified in A.R.S. § 36-2995.

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The definitions in A.R.S. § 36-2981, A.A.C. R9-22-1001, and A.A.C. R9-31-101 apply to this Article.

R9-31-1002. ~~First and Third Party Liability Monitoring and Compliance~~ General Provisions

- A.** ~~First or third party liability sources. The Administration shall monitor first or third party liability payments to a contractor, provider, nonprovider, or noncontracting provider, which may include but are not limited to payments by or for:~~
- ~~1. Private health insurance;~~
 - ~~2. Employment related disability and health insurance;~~
 - ~~3. Other federal programs not excluded by statute;~~
 - ~~4. Court ordered or non-court ordered medical support from an absent parent;~~
 - ~~5. State worker's compensation;~~
 - ~~6. Automobile insurance, including underinsured and uninsured motorists insurance;~~
 - ~~7. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;~~
 - ~~8. First party probate estate recovery;~~
 - ~~9. Adoption related payment; and~~
 - ~~10. Tortfeasor.~~
- B.** ~~Contractor responsibility. A contractor shall:~~
- ~~1. Recover first and third party payments from the sources identified in subsections (A)(1) through (4); and~~
 - ~~2. Recover first and third party payments from the sources identified in subsections (A)(5) through (8), when directed by the Administration.~~
- C.** ~~Monitoring. The Administration shall determine whether a contractor, provider, nonprovider, or noncontracting provider is in compliance with the requirements in this Article by inspecting claim submissions and payment documentation for cost avoidance and recovery activities.~~
- D.** ~~Notification for perfection, recording, and assignment of Title XXI liens.~~
- ~~1. County requirements. The Administration may preserve its lien rights according to A.R.S. §§ 36-2986(M), 36-2915 and 36-2916.~~
 - ~~2. Hospital requirements. Hospitals providing emergency or urgent medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party shall notify the Administration according to subsection (E) within 30 days after discharge. A hospital may satisfy the requirement of this subsection also by mailing to the Administration a copy of the lien it proposes to record or has recorded according to A.R.S. § 36-2986 within 30 days after discharge.~~
 - ~~3. Contractor, provider, nonprovider, and noncontracting provider requirements. A contractor, provider, nonprovider, or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party shall notify the Administration according to subsection (E) within 30 days after providing the services.~~
- E.** ~~Notification information for liens. To satisfy notification requirements, all of the following information shall be mailed to the Administration:~~
- ~~1. Name of the contractor, provider, nonprovider, or noncontracting provider;~~
 - ~~2. Address of the contractor, provider, nonprovider, or noncontracting provider;~~
 - ~~3. Name of the member;~~
 - ~~4. The member's Social Security number or Title XXI identification number;~~
 - ~~5. Address of the member;~~
 - ~~6. Date of the member's admission;~~
 - ~~7. Amount estimated to be due for care of the member;~~
 - ~~8. Date of the member's discharge;~~
 - ~~9. Name of county in which injuries were sustained; and~~
 - ~~10. Name and address of all persons, firms, and corporations and their insurance carriers claimed by the member or legal representative to be liable for damages.~~
- F.** ~~Notification of health insurance information. A contractor, provider, nonprovider, or noncontracting provider shall provide notification of health insurance information to the Administration. To satisfy notification requirements, all of the following health insurance information shall be submitted to the Administration within 10 days of receipt of the health insurance information:~~
- ~~1. Name of the member;~~
 - ~~2. The member's Social Security number or Title XXI identification number;~~
 - ~~3. Insurance carrier name;~~
 - ~~4. Insurance carrier address;~~
 - ~~5. Policy number, if available;~~
 - ~~6. Policy begin and end dates, if available; and~~
 - ~~7. Insured's name and Social Security number.~~

The Administration is the payor of last resort as specified in A.R.S. § 36-2986.

R9-31-1003. Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section except:

1. This Section does not apply to AHCCCS-covered services.
2. This Section applies to Title XXI covered services.

R9-31-1004. Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

R9-31-1005. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section except:

1. This Section does not apply to AHCCCS-covered services.
2. This Section applies to Title XXI fee-for-service and reinsurance payments.

R9-31-1006. Administration Monitoring Responsibilities

The Administration shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

1. Private health insurance;
2. Employment related disability and health insurance;
3. Other federal programs not excluded by statute;
4. Court ordered or non-court ordered medical support from an absent parent;
5. State worker's compensation;
6. Automobile insurance, including underinsured and uninsured motorists insurance;
7. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
8. First-party probate estate recovery;
9. Adoption related payment; or
10. Tortfeasor.

R9-31-1007. Notification for Perfection, Recording, and Assignment of Title XXI Liens

A. County requirements. The member's county of residence shall notify the Administration under R9-22-1008 within 30 days after providing services under A.R.S. § 11-291 of charges for hospital or medical services provided to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first or third party, so the Administration preserves its lien rights under A.R.S. §§ 36-2915, 36-2916, and 36-2986.

B. Hospital requirements. Hospitals providing emergency or urgent medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- and third-party shall:

1. Notify the Administration under R9-22-1008 within 30 days after discharge; or
2. Mailing the Administration a copy of the lien it proposes to record or has recorded according to A.R.S. § 36-2986 within 30 days after discharge.

C. Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- and third-party shall notify the Administration according to R9-22-1008 within 30 days after providing the services.

R9-31-1008. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

R9-31-1009. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

- 1. Sections Affected**

R17-5-504	<u>Rulemaking Action</u>
R17-5-505	Amend
	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-4002, 28-4003, 28-4007, 28-4033, and 28-4034
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 5155, November 28, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Brent P. Heiss, Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-7941

Fax: (602) 241-1624

E-mail: bheiss@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.
- 5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

The agency is amending R17-5-504 and making new Section R17-5-505 for the following purposes:

 - a. To set forth application and maintenance procedures for self-insurance of 26 or more vehicles owned by a person or entity;
 - b. To provide notification of reasonable grounds and due process for cancellation of self-insurance by the Division; and
 - c. To provide notice of supplementary financial responsibility requirements according to a self-insuring business entity's intended vehicle usage as required under A.R.S. § 28-4033(A).
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency will not rely on any study for this rulemaking.
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The cost-benefit requirement to R17-5-504 remains unchanged from the previous rulemaking effective March 11, 2003. The only effect of this rulemaking is on qualified persons or business entities wishing to self-insure. The only costs incurred by self-insurers are minimal administrative costs for preparing the application and supplying the required documentation to the Division. A self-insurer will also incur minimal annual administrative costs in providing the required annual update information to the Division to maintain a current self-insurance certificate in good standing. The benefit is assumed substantial savings to a self-insuring entity in standard financial responsibility coverage of fleet vehicles. The agency's mandatory insurance unit experiences not readily quantifiable (presumed mini-

Notices of Proposed Rulemaking

mal) operating costs in approving and tracking self-insurer program requirement compliance. This activity is part of the mandatory insurance unit's routine duties.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

An interested person may communicate with the agency official listed in item #4 concerning the economic impact statement.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Date: Monday, January 5, 2004

Time: 2:00 p.m.

Location: Executive Hearing Office
3737 N. 7th Street, Suite 160
Phoenix, AZ 885014-5079

Nature: Oral proceeding to receive public comment.

Closure: The public record will close on Friday, January 9, 2004, 4:30 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 5. FINANCIAL RESPONSIBILITY

Section

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability and Procedure

R17-5-505. ~~Repealed~~ Self-insurance Provisions

ARTICLE 5. FINANCIAL RESPONSIBILITY

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability and Procedure

A. If a motor carrier under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination by an insurance company that reports to the Division under A.R.S. § 28-4148, R17-5-502, or R17-5-503, the motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A), as follows:

1. At the time of initial motor vehicle registration, or
2. As notified by the Division under R17-5-506.

B. An insurance company, its managing general agent, broker, or agent may submit, on behalf of a motor carrier, proof of financial responsibility to the Division.

C. As proof of financial responsibility, a motor carrier shall submit the original or photocopy of:

1. A valid liability insurance policy;
2. A binder dated within 90 days of filing with the Division;
3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance listed in subsection (E), naming the Arizona Department of Transportation as the Commission;
4. A completed and signed Certificate of Liability Insurance form listed in subsection (F) naming the Arizona Department of Transportation, Motor Vehicle Division as the certificate holder; or
5. A certificate of self-insurance issued by the Division after a motor carrier meets the requirements of A.R.S. §§ 28-4007 and 28-4135.

D. Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:

1. A binder from an insurance company other than the insurance company named in the first binder; or
2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (C)(5).

E. A person may obtain a Form E from:

Uniform Information Services, Inc.
125 Nagog Park, Acton, Massachusetts 01720;

Notices of Proposed Rulemaking

Telephone: (800) 872-0700;
Fax: (978) 263-1824; or
Web site: www.uniforminformationservices.com.

- F. A person may obtain a Certificate of Liability Insurance form from:

ACORD
1 Blue Hill Plaza, P.O. Box 1529, 15th Floor
Pearl River, New York 10965;
Telephone: (800) 444-3341 extension 506;
Fax: (845) 620-3600; or
Web site: www.acord.org.

- G. A motor carrier may self-insure according to provisions prescribed under A.R.S. § 28-4007 and R17-5-505.

R17-5-505. ~~Repeated~~ Self-insurance Provisions

- A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
 2. Demonstrates minimum assets of \$1 million on documentation required under subsection (C) or (D); and
 3. Meets any additional financial responsibility requirement prescribed under A.R.S. § 28-4033(A) according to an insured vehicle's weight or intended use.
 4. Provide a contact for your business office of the company with current phone number and mailing information.
- B. On a form prescribed by the Division, a self-insurance applicant shall provide the following:
1. The applicant's name;
 2. Business name, if applicable;
 3. Mailing address, city, state, and ZIP code;
 4. A selection of coverage type:
 - a. Public liability only; or
 - b. Public liability and property damage;
 5. Number of vehicles in the applicant's fleet;
 6. A selection list that describes the nature of the applicant's business;
 7. A description of any hazardous materials transported by type, class, or weight;
 8. A report of all accidents in the prior 39-month period before the application date;
 9. The applicant's signature and official business title to certify that all information is true and correct; and
 10. Acknowledgment by a notary public or signature by an authorized Motor Vehicle Division agent.
- C. Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
 2. An annual financial report.
- D. Upon approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E. An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division
Financial Responsibility Unit
P.O. Box 2100, Mail Drop 535M
Phoenix, AZ 85001-2100
- F. A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G. A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage.
- H. A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.
- I. In addition to self-insurer's failure to pay a default judgment as prescribed under A.R.S. § 28-4007(C), the following also constitute reasonable grounds for cancellation of a self-insurance certificate by the Division:
1. A self-insurer fails to comply with the requirements of the Division's annual update under subsection (D); or
 2. A self-insurer no longer owns the covered business or fleet.
- J. For purposes of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to provisions prescribed under R17-1-501 through R17-1-513.

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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: Monday, January 5, 2004

Time: 2:00 p.m.

Location: Executive Hearing Office
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Nature: Oral proceeding to receive public comment.

Closure: The public record will close on Friday, January 9, 2004, 4:30 p.m.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rule:

None

13. The full text of the rule follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 5. FINANCIAL RESPONSIBILITY

Section

R17-5-508. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

ARTICLE 5. FINANCIAL RESPONSIBILITY

R17-5-508. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

A. For purposes of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 vehicles registered in the person's name.

B. A person that wishes to provide alternate proof of financial responsibility for 26 or more vehicles registered in the person's name shall follow the provisions prescribed under A.R.S. § 28-4007 and R17-5-505.